

Before the
Federal Communications Commission
Washington, D.C. 20554

Joint Petition for Expedited Rulemaking Establishing
Minimum Notice Requirements for Detariffed Services

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CI Docket No. 02-22

COMMENTS OF AMERICATEL CORPORATION

AMERICATEL CORPORATION

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I. SUMMARY AND INTRODUCTION

Americatel Corporation (“Americatel”),¹ through counsel, respectfully submits its comments in response to the Federal Communication Commission’s (“FCC” or “Commission”) February 6, 2002 public notice in this proceeding.² The Public Notice seeks comments on a petition for expedited rulemaking (“Petition”) filed by nine parties³ on October 29, 2001. The Petitioners seek a new Commission rule that would impose a minimum 30-day, customer notice

¹ Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. Americatel also operates as an Internet Service Provider (“ISP”). Americatel specializes in serving Hispanic communities throughout the United States, offering presubscribed (1+), dial-around, and prepaid long distance services, as well as private line and other high-speed services to its business customers.

² *Pleading Cycle Established for Comments on Joint Petition for Expedited Rulemaking Filed by AARP, Consumer Action, Consumer Federation of America, Consumers Union, the Massachusetts Union on Public Housing Tenants, the National Association of Regulatory Utility Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Consumer Advocates, and the National Consumers League*, Public Notice, DA 02-271 (rel. February 6, 2002 (“Public Notice”).

³ The nine petitioners are AARP, Consumer Action (“CA”), Consumer Federation of America (“CFA”), Consumers Union (“CU”), the Massachusetts Union on Public Housing Tenants (“MUPHT”), the National Association of Regulatory Utility Commissioners (“NARUC”), the National Association of Consumer Agency Administrators (“NACAA”), the National Association of State Utility Consumer Advocates (“NASUCA”), and the National Consumers League (“NCL”) (collectively as “Petitioners”).

requirement for any material change to a non-dominant interchange carrier's ("IXC") rates, terms, or conditions for interstate and international long distance services.⁴ Moreover, Petitioners have proposed that such notice be given via "bill insert, postcard, or letter,"⁵ *i.e.*, hard copy.

While Americatel fully supports the intent of the Petitioners—to assist consumers in obtaining sufficient information about long distance services to make informed purchase decisions—the proffered solution—a single, wooden rule mandating the use of printed customers notices in all instances, would simply not work in all market situations. Such a rule would, for example, make it virtually impossible for carriers to offer quickly developed, promotional rates that are available for only a very short period, thus depriving consumers of the benefit of these often very deep discounts. Moreover, an inflexible rule would make it very difficult for a carrier to respond to competition, thus impeding the operation of market forces and limiting consumer options. A better approach would be for Petitioners to work with the Commission and IXCs to educate consumers about long distance choices. However, to the extent that the FCC decides to impose a new rule requiring hard copy notice, the rule should only apply to an IXC's basic service offering (a "Safe Harbor" class of service), rather than to all of a carrier's services.

II. CONSUMERS DESERVE BASIC INFORMATION ABOUT THEIR LONG DISTANCE SERVICES

Americatel fully agrees with the basic premise of Petitioners—consumers should be given access to accurate and useful information about their long distance services. Americatel

⁴ Petition at 1,7.

⁵ *Id.*

does this today. Americatel's Internet web site⁶ contains all pertinent information about its services, including applicable rates, terms, and conditions, in both Spanish and English versions. Americatel also provides its customers with access to bilingual operators and customer service representatives on a 24/7 basis. These actions already provide consumers with reasonable access to information about Americatel and its service offerings. Americatel has not received any customer complaints regarding a lack of notice for any of its rate changes that have occurred since Americatel cancelled its long distance tariffs. Perhaps there is evidence that this has not been the case for other carriers though.

Admittedly, it might be workable in some limited instances for carriers to announce price changes 30 days in advance. For example, if a carrier were to decide to raise or lower all of its rates by five percent, it could probably make that announcement one month before the across-the-board price changes were implemented. However, such an inflexible rule would prohibit a carrier from making faster price changes such as by lowering its rates immediately to meet the prices of a new competitor or to reflect reduced local exchange carrier access charges.

A month's prior notice of price changes, especially in the more volatile international market, may not work well at all for other reasons too. A carrier's costs for carrying calls to any specific country can change quickly and often by a significant amount due to actions by the foreign correspondent. This type of wholesale price change, in turn, creates a need for a corresponding retail price adjustment. A wait of a month before prices could lawfully be changed would be unworkable for most carriers and their customers. As demonstrated herein,

⁶ <http://www.americatel.net>.

the Petitioners' proposal would likely have significant negative consequences in many instances and could have the effect of stabilizing prices at levels above what they might otherwise be if allowed to fluctuate freely with market forces.

III. LONG NOTICE PERIODS PROMOTE PRICE COORDINATION AND HIGHER PRICES

It is important for the Commission to recall one of the very reasons it initially decided to detariff interstate long distance services. The FCC determined that tariffs (and their attendant notice periods) promote price coordination by carriers,⁷ which, in turn, often results in higher prices for consumers. In deciding to reduce the tariff-filing notice period for non-dominant carriers from fourteen days to one day, the FCC stated that: "The advance notice period allows competitors time to begin, and possibly complete, development and implementation of a market response before the tariff becomes effective."⁸ Price coordination among carriers becomes easier with long notice periods.

Also, many carriers, armed with advance knowledge of their competitors' pricing changes, could readily opt to maintain higher prices for their own calls in order to maximize revenues. On the other hand, a smaller carrier that is unsure of its competitors' price changes may well opt for lower prices to retain or even gain customers. Long notice periods can still harm consumers today and, therefore, must be avoided.

⁷ *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, Second Report and Order, 11 FCC Rcd 20730, 20750 (1996) ("*Second Report*") (subsequent history omitted).

⁸ *Tariff Filing Requirements for Nondominant Common Carriers*, Notice of Proposed Rulemaking, 8 FCC Rcd 1395, 1397-98 (1993).

IV. A MANDATORY 30-DAY NOTICE RULE WOULD DISTORT THE MARKET FOR LONG DISTANCE SERVICES

The wholesale adoption of the Petitioners' proposal would distort the market by preventing carriers from implementing any material change in rates, terms, or conditions, assumedly up or down, for long distance services for at least 30 days from the date consumers are notified. Such a rule could effectively prevent another carrier from quickly taking advantage of its competitors' higher prices by offering rate cuts. For example, assume that a large IXC (Carrier A) proposed rate increases for all of its basic services and provided its customers with 30-days' written notice of the price increase. In reaction thereto, Carrier B, a much smaller entity, might decide to offer lower rates in an attempt to gain some of Carrier B's customers. However, since a rate reduction would likely constitute a material change in Carrier B's rates necessitating written notice to customers, Carrier B would be effectively barred from immediately targeting Carrier A's customers. Carrier B's competitive response would be delayed for at least 30 more days. The new rule would decrease competition levels in the market. Consumers are likely to lose with a wholesale adoption of the proposed rule.

Also, the Petitioners' proposal would likely create a significant barrier to carriers' ability to offer short-term promotions. Americatel, for example, regularly offers its customers special promotional rates to various Latin American countries, but only for a limited period of time such as a weekend. Americatel might offer its customers a \$0.15 per-minute rate, rather than its standard rate of \$0.39, for all calls to Peru for the weekend of March 2-3. These special promotions are offered, based on a variety of confidential marketing factors, with only short-term notice, *i.e.*, a day or two, before the promotion begins. If one were to assume, *arguendo*, that the Petitioners' proposal were applicable to these promotions, Americatel would be forced either to preannounce its marketing strategies to its competitors by sending written notice of its

planned special promotions at least a month in advance or simply to reduce or even stop offering special promotions. Americatelecom doubts that the Petitioners would truly desire these results.

The Petitioners' recommendation is also inconsistent with a dynamic market. Some carriers offer their customers international calling packages that may guarantee the lowest possible rate based on available wholesale rates ("spot market"). For example, calls to Japan may be priced based on the best available wholesale rate, plus a 15% mark-up. These rates can be expected to change quite often with the fluctuation of wholesale transport prices since the retail carrier tries to maintain low prices by repeatedly switching backbone carriers in order to take full market advantage of even temporary excess capacity. This type of product meets the needs of some customers as demonstrated by the market. However, application of the rule proposed by the Petitioners would effectively drive it from the market. Such a result would contravene the public interest.

V. WHAT ARE MATERIAL CHANGES?

Petitioners have correctly recognized that not every change in a carrier's rates, terms, and conditions is a material one. It would be an expensive folly for the FCC to require carriers to send hard copy customer notices for every miniscule change in a carrier's service offering. However, the proposal does not provide any guidance as to what changes would be considered material. One would presume that an across-the-board 25% increase (or decrease) in rates would be material. On the other hand, a 25% increase or decrease in a carrier's rate to a single country, which often occurs in the international call market, would probably not be material. Yet, such a price change would likely be important for those customers who regularly call such country. Carriers are in no position to guess what types of changes would be material for any specific customer.

Materiality should be decided from an average or typical customer' perspective rather than from that of any individual customer. However, even if the FCC were to adopt such a standard, it should still expect to be requested to provide additional guidance as to the meaning of materiality in practice. Indeed, there are likely to be either complaints and/or petitions for declaratory rulings on the issue. The FCC must, therefore, be cautious in adopting a clearly confusing rule that would likely require the Commission to expend considerable future resources to interpret and enforce.

VI. THE PROBLEM IS CONSUMER INERTIA, RATHER THAN LACK OF NOTICE

Petitioners have identified what they perceive to be a “take it or leave it” attitude by long distance carriers.⁹ This view is mistaken. While most carriers offer their mass market customers standardized rate plans, rather than bargained for individual contracts, the market offers consumers, both residential and business, many options for long distance service that can save them money from the standard rates offered by large carriers. These options include presubscribed (1+) service, dial-around service, and prepaid card service. Many smaller carriers offer basic rates that are lower than those offered by larger carriers. For example, Americatel's *Unidendo América* plan for business customers, which carries a monthly fee of \$3.95, offers customers a \$0.19 per minute rate for calls to Brazil, while AT&T's per-minute rate to Brazil under its “All in One Plan” is \$0.38, with a minimum monthly usage charge of \$15.00.¹⁰ Residential or business customers can also make interstate calls using Americatel's network on a dial-around basis (10-10-123) at a rate of \$0.095, which is considerably below AT&T's “State-To-State Direct Dialed Basic Rate Plan.” That plan offers customers a 35¢ peak rate, a 29.5¢

⁹ Petition at 4.

¹⁰ See http://americatel.net/unidendo_business/plan1_i.htm. (visited February 11, 2002).

off-peak rate, and an 18.5¢ weekend rate for direct dialed station state-to-state calls.¹¹ Finally, many consumers also purchase prepaid cards from Americatel that offer competitive prices.

However, while Americatel and other IXC's spend considerable sums advertising their services,¹² only consumers can decide which carrier to use and when to switch carriers. Consumer inertia in the long distance market is often quite strong, especially among lower volume consumers.¹³ Many do not take the time to obtain or consider information that would assist them in making informed purchasing decisions. Providing these consumers with 30-days advanced written notice of long distance plan changes will not affect their inertia. It is unlikely that most consumers would even read these notices, much less change their purchasing behavior.

It would probably be more productive for the Petitioners to channel their efforts into customer education programs that would encourage customers to learn more about long distance services and their options. For example, the Petitioners could work with public libraries, which have subsidized access to the Internet through the FCC's schools and libraries universal service support program, to create links to the state public utilities commissions' home

¹¹ See <http://serviceguide.att.com/ACS/ext/od.cfm?OID=652&menu=101>. (visited February 11, 2002).

¹² For example, since 1998, Americatel has placed millions of dollars in television advertising with Spanish-language television stations and in print media. In addition, Americatel has invested heavily in establishing Don Francisco, a highly acclaimed star of Spanish-language television aired in the United States, as the exclusive spokesman for Americatel's products and services. Don Francisco (Mario Kreutzberger) is the host of the Spanish-language variety program *Sábado Gigante*, which has aired in Chile since 1962 and in the United States since 1986. *Sábado Gigante* reaches approximately 90% of the Hispanic households in the U.S. and is transmitted to 42 countries in North America, South America, and Europe.

¹³ See, e.g., "AT&T, Sprint, MCI Hike Rates," *Washington Post*, Tuesday, January 1, 2002; p. E01.

pages or other sources of consumer information. The Texas PUC, for example, has for some time attempted to educate consumers with its monthly survey of long distance rates.¹⁴

VII. MANDATORY 30-DAY NOTIFICATION WOULD LIKELY RESULT IN HIGHER BILLS FOR MANY CONSUMERS

Profit margins in the long distance telecommunications industry are quite thin today. Most carriers, large or small, simply do not have the ability to incur additional costs without passing them on to consumers. If Americatele were required to send a hard copy notice to its customers whenever it changed its rates, term, and conditions for service, Americatele's expenses would increase significantly. (Electronic notification by e-mail would likely be much less expensive for carriers to implement.) Over the long term, Americatele must either recover those increased costs from its customers or stop providing services. Moreover, market forces would create pressure for Americatele to seek to recover these costs from its least elastic services and lower-volume users in the form of flat monthly fees or higher per-call charges.¹⁵ Americatele respectfully submits that creating new regulatory costs that would likely increase rates for lower-volume consumers would not serve the public interest.

¹⁴ <http://www.puc.state.tx.us/ocp/telephone/rates/index.cfm>. (visited February 11, 2002).

¹⁵ See generally, *Low-Volume Long-Distance Users*, Notice of Inquiry, 15 FCC Rcd 6298 (1999). In this proceeding, the FCC grappled with the impacts of long distance carriers passing on flat-rated charges to recover their universal service support contributions from low-volume users. As the FCC noted, it had not expected that its previous universal service support mechanism would have resulted in increased telephone bills for low-volume users. *Id.* at 6301. It is likely that the blanket adoption of the Petitioners' proposal would have a similar impact on many low-volume callers. Hence, Americatele urges the FCC to consider this factor in its decision-making process in order to prevent future unexpected surprises.

VIII. CARRIERS WITH INTERNET WEB SITES COULD HIGHLIGHT SIGNIFICANT CHANGES IN THEIR RATES, TERMS AND CONDITIONS FOR SERVICE

As an alternative to the Petitioners' proposal, Americatele suggests that those carriers that already post rates, terms and conditions for service on their Internet web sites could create a "what's new" page for their services and hyperlink it to the actual rate or text changes. A carrier would then remove these links after a reasonable period so as not to confuse customers. This type of approach would provide many customers with access to pertinent information about their long distance services on a relatively cost-effective basis.

If the FCC, on the other hand, decides that some form of printed (hard copy) notification should be sent to customers, the Commission should still not mandate that it be sent in all instances. Rather, the FCC should permit carriers to create a new class of service for its basic service customers (a "Safe Harbor") that would be entitled to receive a printed 30-day advance notice of all material changes in rates, terms, and conditions for service. Those customers could also be charged rates that recover the costs for preparing and sending notices. Other customers who do not want such notice could subscribe to other rate plans, which may, in fact, provide them with more value for their money.

IX. CONCLUSION

For the reasons set forth above, the FCC should decline to open a new rulemaking proceeding as requested by the Petitioners. Rather, the Commission should continue to monitor the long distance market and address any carrier-specific problems on a case-by-case basis if and when they arise.

Respectfully submitted,
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Dated: March 11, 2002

CERTIFICATE OF SERVICE

I, Lila A. Myers, do hereby certify that the foregoing **COMMENTS OF AMERICATEL CORPORATION** was served on this 11th day of March, 2002, upon the following in the fashion indicated:

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